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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,152	07/05/2000	Napoleone Ferrara	9491-043-27 DIV	4661

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EXAMINER

WEBER, JON P

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/02/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/610,152

Applicant(s)

FERRARA ET AL.

Examiner

Jon P. Weber, Ph.D.

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: New limitations not previously considered.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

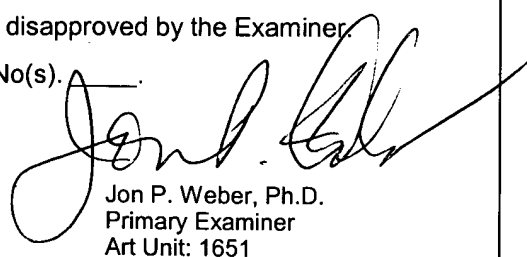
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 8-13.

Claim(s) withdrawn from consideration: 14 and 15.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Jon P. Weber, Ph.D.
Primary Examiner
Art Unit: 1651

Status of the Claims

The amendment filed 21 June 2002 under 37 CFR 1.116 in reply to the final rejection of 05 April 2002 has been considered but is not deemed to place the application in condition for allowance and will not be entered because: Newly presented claim 16 provides for specific carriers and additives in the composition which have not previously been considered. Accordingly, claim 16 has not been entered and only claims 8-15 are pending in the application for consideration on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

This application still contains claims 14-15 drawn to an invention nonelected with traverse in Paper No. 5, filed 18 April 2001. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. The continued traversal without evidence that the restriction was improper is inappropriate and not deemed an appropriate action or complete response to the Office action of 05 April 2002. Claims 8-13 remain to be considered on the merits.

Claim Rejections - 35 USC § 102 and 103

Claims 8-12 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al. (1993), Zarnegar et al. (1993), Grant et al. (1993) or Bussolino et al. (1992).

Claims 8-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen et al. (1993), Zarnegar et al. (1993), Grant et al. (1993) or Bussolino et al. (1992) in view of Godowski et al. (1994).

It is argued that claims 8-9 are drawn to kits within a container and with various functional limitations, where claim 9 adds instructions for use. Claim 10 is a kit with two containers where the buffer is separate. While claims 11-15 are drawn to a pharmaceutical composition. It is urged that the relied upon references do not teach these limitations.

It has previously established that the functional intended use limitations were accorded no patentable weight because they do not materially change the composition. Similarly, written instructions are not accorded patentable weight unless the writing is an integral aspect of the invention as in the number in a display panel. Written information is not normally accorded patentable weight inasmuch as it is not itself statutory subject matter.

It is clear that the references disclose HGF. It must be in some sort of container else it would be lying on the laboratory bench top. Even a casual reading of the references demonstrates that the samples are contained. Clearly a second container holding buffer is present in the labs as well. Thereby meeting the claim limitations. Clearly water or simple buffered water forms a pharmaceutically acceptable carrier. Accordingly, all of the claimed limitations have been met by the relied upon references. The limitations were addressed adequately in the previous Office action.

No claims are allowed.